PETER GOMEZ

v.

BRENTNALL BEARD & CO. (S) PTE. LTD.

HIGH COURT, SINGAPORE
AP RAJAH J
[SUIT NO. 556 OF 1977]
21 MARCH 1985

AGENCY: *Commission payable - Whether 5% of total premium collected or 5% of commission earned by defendant.*

CONTRACT: *Frustration - Whether insurance contract frustrated.*

The plaintiff was an insurance agent and the defendant carried on the business of insurance brokers. As a result of an introduction to the Moscow Narodny Bank ("MNB") made by the plaintiff and his client, Suresh, the defendant was appointed insurance brokers in respect of ships owned by the Bangladesh Shipping Corporation ("BSC") and financed by MNB. To confirm the arrangements, the defendant wrote a letter dated 19 December 1973 to Suresh summarising the commissions payable both to Suresh and the plaintiff. The dispute between the parties was regarding the commission payable. The plaintiff contended that it was 5% of the total premium while the defendant claimed that it was 5% of the commission earned by the defendant. The defendant contended also that the contract of the defendant as insurance brokers was frustrated as another insurance company had intervened to become the insurer of the BSC vessels, and that the defendant was excluded as insurance brokers.

Held:

[1] The plaintiff was entitled to 5% of the total premium collected. The word "remuneration" must be read to mean what is earned based on a percentage of the premiums collected. That word must be given the same meaning throughout the whole letter dated 19 December 1973.

[2] There was no frustration of the contract.

[Judgment for plaintiff]

For the plaintiff - Prabhakaran Nair
For the defendant - Chia Quee Khee

JUDGMENT

AP Rajah J:

At the outset of this trial both Counsel had agreed on a statement of facts and what they thought in their view were the issues in this case. I therefore propose to use this statement of facts as a part of my judgment.

The plaintiff is an insurance agent and the defendant carries on the business of insurance brokers. Sometime in 1973 the plaintiff met his client Mr. Suresh Mahawar (Suresh) of Makhanlall & Co Pte Ltd of Malacca Street, Singapore who informed him that the Bangladesh Shipping Corporation (hereinafter referred to as BSC) was looking for a suitable and reliable insurance company in Singapore to insure its vessels. At that time the plaintiff had an office within the premises of the defendant company. The vessels were at that time the subject of some form of financing to be given by the Moscow Narodny Bank (hereinafter referred to as MNB), Singapore Branch, to the BSC, and through the introduction of Suresh and the plaintiff,

the defendant became acquainted with the MNB, who by a letter of 26 December 1973 appointed the defendant as insurance brokers for the placement, arrangement and servicing in all respects of insurance on ships owned by the BSC and financed by MNB.

To confirm the arrangements, the defendant's Managing Director, Mr. Don Baxter (Baxter) wrote a letter dated 19 December 1973 to Suresh (AB3) summarising the commissions payable to both Suresh and the plaintiff. It is this letter that will form the basis of the plaintiff's claim as well as the bone of contention between the plaintiff and the defendant.

The amount of the premiums collected is not being disputed as the figures given by the plaintiff in his statement of claim were all obtained from the defendant's accounts. The amount of commission claimed is however in issue.

Very briefly, it is the plaintiff's contention that the letter signed by Baxter clearly entitles him to a 5% commission of the total premium collected by the defendant from the BSC irrespective of the type of insurance for which the premium was collected.

The defendant's contention however is that the plaintiff is not entitled to this commission because

(a) the effect of the commission letter is that the plaintiff was to be entitled to a commission of 5% of the commission earned by the defendant and not 5% of the premium;

(b) the commission letter was based on the defendant effecting, or expecting to effect the insurance of the BSC vessels -

(i) as insurance brokers and not reinsurance brokers;

(ii) as insurance brokers for Hull & Machinery, Increased Value and War Risks insurances, but no Protection and Indemnity insurances;

(c) there was frustration of the defendant's contract as insurance brokers as aforesaid in that the Sadharan Bima Corporation (SBC), a Bangladesh insurance company, intervened to become the insurer of the BSC vessels, and this resulted in the defendant being excluded as insurance brokers as envisaged. The defendant thereafter, through the efforts of Baxter, managed to obtain some business of effecting the re-insurance of the BSC's vessels are re-insurance brokers, but not as insurance brokers and the commission earned by the defendant in this respect was not, and could not be, the subject of the commission letter; therefore, the plaintiff had no right in this commission.

The issue before the Court is therefore the interpretation of this letter signed by Baxter. Related to this is the other issue whether the commission contract has been frustrated. It is the plaintiff's contention that no such frustration has taken place as he is only claiming on the actual business already concluded. The defendant however says that the commission letter envisaged the defendant acting as insurance brokers of the BSC vessels, and secondly for the Hull & Machinery, Increased Value & War Risks insurance and as all these did not subsequently materialise, the basis on which the plaintiff was to be paid the said commission was gone and the plaintiff is not entitled to any commission at all.

In his final submission to the Court after the evidence has been taken Mr. Chia for the defendant narrowed the issues even further and said:

> "The issue before the Court although narrow, is not simple. Matter turns on the word 'remuneration'. The word remuneration must mean what one is paid for the job done. 5% remuneration can only mean 5% of what the defendant earns. Therefore 5% of the remuneration must mean 5% of the brokerage defendant earned on the deal. It cannot mean 5% of the premium."

He went on further to say that in the particular circumstances of this case nothing was payable as the business envisaged did not materialise and that the business that was done was not what was envisaged.

Now with regard to his submission that the issue before the Court though narrow is not a simple one and that everything turns on the question of what interpretation is to be given to the word 'remuneration' in document AB3. If one looks at AB3 it will be seen that it is in three paragraphs. It says:

> With reference to Bangladesh Shipping Corporation, I wish to confirm our discussions relating to the above account as follows:
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> 1. Brentnall Beard & Co (S) Pte Ltd, will retain 5% brokerage to their account. 5% of the remuneration will be paid to Mr. P Gomes. The balance of 10% and/or any additional will be paid to your account.
> 2. This remuneration will be payable during the period that the business remains with our company.
> 3. We will share in the same proportions as stated in (1) above, any remuneration or any additional business we obtain from the abovenamed Corporation as a result of your introduction.

This document AB3 was addressed to Suresh and copied to the plaintiff. It would be noted that the word remuneration appears in all 3 paragraphs. It is conceded by the defendant that under the document the defendant and Suresh get 5% and 10% respectively of the premiums collected.

It is a rule of construction, unless otherwise indicated in the document, that the word remuneration should be given the same meaning throughout the whole document. A reading such as advocated by the defendant's Counsel would make nonsense of this document and would be in conflict with Suresh getting 10% commission on the premiums collected. The only way one can make sense is to read the word remuneration to mean that one earns or is paid for work done. This would very much depend on the manner in which the remuneration is to be effected in the trade. When one talks of brokerage in the insurance world one talks about a percentage on the premiums collected. When one talks of brokerage in a land deal one talks about a percentage on the sale price. In this document I must read remuneration to mean what the plaintiff's Counsel says it means. Remuneration means what is earned based on a percentage of the premiums collected. Therefore, in my view what document AB3 says is that 10% remuneration or 10% brokerage is to be paid to Suresh, 5% brokerage to the defendant company and 5% brokerage to the plaintiff. It is suggested that this kind of construction will give to the plaintiff something quite out of proportion to the effort he has put in this contract. I don't think it is for me to say who put in the greater effort. I can only determine the rights of the parties on the contract before me and if the parties agree that the plaintiff should get 5% for his introduction, that in my view is sufficient consideration. It is not for the Court to say because you did so little therefore you cannot get as much as the defendant who did much more. The defendant company are insurance brokers. It is run by hard-headed and experienced businessmen. They know exactly what they are doing. They know the value of an introduction when a customer is brought to them and it is priced accordingly. Therefore I hold that what document AB3 means is that each of one of the 3 parties would get the percentages set out in the document itself, that is, the plaintiff would get 5% of the premium collected, Suresh on behalf of the company would get 10% of the premium collected and defendant company would get 5% of the premium collected.

I accept the evidence of the plaintiff when he says, and this is not disputed by the defendant, that in these circumstances it is possible for the broker company to load the premium and it could well be that the premiums collected here on the insurances were loaded although I have no evidence before me of the actual premiums collected in these insurances.

The only other point I have to dispose of is that of the defendant's contention that because of the intervention of the Bangladesh insurance company, the defendant company were frustrated in their contract and are therefore free from liability to the plaintiff.

The plaintiff's claim is a fairly simple one. It is common ground that the defendant did collect premium on insurances or reinsurances effected by them. AB3 reads with MNB's letter of 26 December 1973 to the defendant (AB4) covers all such premiums both in regard to insurances and reinsurances. His claim is simply one based on the premiums actually collected by the defendant. The plaintiff does not contend that the defendant should have collected so much more premium than they actually did. It is a straightforward claim. In the circumstances I must give judgment for the plaintiff.

There will therefore be judgment for the plaintiff in the sum of US$24,290.32 and there will be interest payable at 10% on the said sum from date of issue of Writ to date of judgment i.e. today, 21 March 1985. Costs of the proceedings to the plaintiff.

Also found at [1985] 1 CLJ 495